that of disproving an objective fact. Mere evidence of the applicant that he does not know that there are any reasons for the authority's belief, or denial that there are or can be any reasons for it, is not a sufficient discharge of the onus so as to call on the authority to explain and justify the assertion of his order."

Applicant in her affidavit merely asserts that she does not know that there are any reasons for the Minister's belief, and at the same time denies that there are or can be any reasons for such belief. This, in my view, is clearly insufficient to discharge the onus cast upon her.

Accordingly, I dismiss the application.

Application dismissed.

Solicitors: *Wan Mustapha & Co.*

RE JIMMY LOH HUAN MOH

[F.C. (Pike C.J. (Borneo), Gill & Chang Min Tat JJ.) October 31, 1967]

[Jesselton — Federal Court Civil Appeal No. X.11 of 1967]

*Advocates & Solicitors — Admission — Appeal by qualified person from decision of judge refusing to admit him to roll of advocates in Sabah — Whether judge satisfied that appellant normally resident in Sabah — Whether enrolment to be decided by immigration laws — Advocates Ordinance (Sabah Cap. 2) *ss. 4(2)(c)(i) & 6.*

The appellant who possessed a professional qualification rendering him eligible to be admitted to the roll of advocates in Sabah, appealed against the refusal of the Senior Judge in Sabah to make an order under section 6 of the Advocates Ordinance directing that his name be entered on the roll of advocates kept by the Deputy Registrar in Borneo at Jesselton on the grounds that: (a) the learned judge erred in holding that the appellant had not been normally resident in Sabah within the meaning of section 4(2)(c)(i) of the Ordinance for the requisite period of six months, and (b) the learned judge erred in holding that eligibility for enrolment on the roll of advocates was to be decided by the immigration laws.

Held: (1) the appellant must be able to satisfy the learned senior judge that his residence in Sabah was intended to be as permanent and continuous as anything can be and that he had no present intention of ceasing to be so resident and that at the date of his application he had been so resident for a period of six months. On the evidence the court could not say that the learned senior judge had erred in his decision that he was not so satisfied;

(2) in considering an application under the Advocates Ordinance for admission to the roll no regard ought to be had to the immigration status of the applicant. The fact that he had not been given any guarantee of extended stay by the immigration authorities was not a ground upon which his admission to the roll of advocates could be refused;

(3) the appellant had failed to show that the learned judge was guilty of an erroneous exercise of the discretion vested in him by section 6 of the Ordinance and the appeal should be dismissed.

Per Pike C.J.: "I find it difficult to construe the expression 'normally resident'. With respect to the learned judge I do not consider that it means continuous physical residence without any absences from the State. But the onus is on the applicant to show that he has been normally resident. I am satisfied that it does not mean that an applicant can have two residences, one within and one without the State."

FEDERAL COURT.

K. S. Reddi for the appellant.

Charles Ho (State Counsel) as *amicus curiae.*

The judgments were delivered on October 31, 1967 at Kuching.

Pike C.J. (Borneo): Mr. Loh Huan Moh appeals against the refusal of the learned Senior Judge in Sabah to make an order under section 6 of the Advocates Ordinance, Sabah, directing that his name be entered on the roll of advocates kept by the Deputy Registrar of the High Court in Borneo at Jesselton.

His grounds of appeal are set out in the memorandum of appeal but counsel for the appellant contented himself with arguing two main grounds, namely —

(a) that the learned judge erred in holding that the appellant had not been normally resident within the meaning of section 4(2)(c)(i) of the Advocates Ordinance (Cap. 2) for the requisite period of six months; and

(b) that the learned judge erred in holding that eligibility for enrolment on the roll of advocates is to be decided by the immigration laws.

As to (a): It was not in dispute that Mr. Loh possessed a professional qualification rendering him eligible to be admitted to the roll of advocates or that he exhibited two recent testimonials as to his good character. *Prima facie,* therefore, he complied with the requirements of section 5(1) of the Ordinance and he also complied with section 5(2) in that he delivered a copy of the application for admission and of the documents in support to the State Attorney-General.

Counsel argued that the learned judge should, under section 6, have been satisfied that he was eligible by reason of possessing suitable professional qualifications and having been normally resident in Sabah for the required

---

* Sections 4(2)(c)(i) and 6 of the Advocates Ordinance (Sabah Cap. 2) read as follows:

"4(2). A person having any of the qualifications mentioned in sub-section (1) shall be eligible to be admitted as an advocate if he satisfies the Chief Justice that:—

(c) that (i) he has been normally resident in Sabah for the period of six months immediately preceding the date of his application under section 5;

.....

6. If the Chief Justice is satisfied that —

(a) an application under section 5 is eligible under section 4 to be admitted as an advocate;

(b) that he is in all respects a fit and proper person to be so admitted,

he shall by order direct that upon payment of the prescribed fee the Registrar shall cause the name of the applicant to be entered on the roll".

period of six months and that he was in all respects a fit and proper person to be so admitted, and should, therefore, have ordered that his name be entered on the roll.

Although it is clear that he possessed the requisite professional qualifications, is it equally clear that the learned judge should have been satisfied that he was normally resident for six months immediately preceding the date of his application? And is it clear that the learned judge should have been satisfied that he was in all respects a fit and proper person to be admitted?

It appears from the record that during the period of six months immediately preceding his application he was out of Sabah "during some of July, August and September 1966". I find it difficult to construe the expression "normally resident". With respect to the learned judge I do not consider that it means continuous physical residence without any absences from the State. But the onus is on the applicant to show that he has been normally resident. I am satisfied that it does not mean that an applicant can have two residences, one within and one without the State. The purpose of the amendment to the Advocates Ordinance in 1960 was to protect the interests of resident advocates against the danger of outsiders gaining admission too easily to the roll of advocates. This is clear from the whole tenor of the 1960 amending Ordinance and in particular from the provisions of section 4(3) which excludes any period of residence while on a temporary licence from counting towards the six months' normal residence. It seems to me, therefore, that the applicant must be able to satisfy the learned senior judge that his residence in Sabah was intended to be as permanent and continuous as anything can be in this world and that he had no present intention of ceasing to be so resident and that, at the date of his application, he had been so resident for a period of six months.

Can this court say that the learned judge erred in his decision that he was not so satisfied? In my opinion it cannot.

As to (*b*): While, of course, the learned judge must take judicial notice of the provisions of Schedule A to the Immigration (Prohibition of Entry) Ordinance, 1963, insofar as it may be relevant to any question before him, in my opinion, with all due respect to the learned judge, he was in error in taking upon himself the decision as to whether the interests of local advocates would be prejudiced by the influx of non-Malaysian advocates and in particular whether the admission of the applicant would be so prejudicial. This, it seems to me, is a decision which the executive alone can take. While it is undesirable that the order of a judge admitting an advocate to the roll may be set at nought by a stroke of the pen of the Controller of Immigration, I am clearly of the opinion that in considering an application under the Advocates Ordinance for admission to the roll no regard ought to be had to the immigration status of the applicant. That the possibility of the order of a judge being nullified exists at all is regrettable and can, I suggest, be avoided by the executive government making unequivocally clear to any non-Sabahan advocate seeking admission to the State whether or not he will be permitted to practice his profession. If such a person was told he would not be permitted to practise then it is unlikely that he would seek admission to the roll. But if such a person is admitted to the State and if he satisfies the learned judge that he has been normally resident for six months immediately preceding the application, it seems to me that the fact that he has not been given any guarantee of extended stay by the immigration authorities is not a ground upon which his admission to the roll of advocates can be refused.

Quite apart from the question discussed above the facts disclosed in this application would, it seems to me, have justified the learned judge in declining to admit Mr. Loh to the roll on the ground that he was not satisfied that Mr. Loh was in all respects a fit and proper person to be admitted to the roll.

At page 12 of the record the appellant is recorded as saying:—

> "I have not been in professional employ since I left Rayner & Co. on 17th October 1966. Since then I have been out of Sabah on a number of occasions. I have had professional duties in Brunei. I had been permitted to practice in Brunei on a special licence."

At page 11 appellant stated he had a work pass for employment with Rayner & Co. from 5th May, 1966, to 10th November, 1966, but it was cancelled when he resigned from Rayner & Co. on 15th October, 1966. And at page 16 Harley J. found that he was given a work pass entitling him "to work with Messrs. Rayner & Co. as advocate and solicitor".

Here it seems that the learned judge fell into error when he says "I pass no comment on the words 'advocate and solicitor' entered on the work pass. He, of course, could not act in Sabah in that capacity." It is true he could not *lawfully* do so without either being admitted to the roll of advocates or being granted a temporary licence under section 10(b) of the Ordinance, but taken in conjunction with the fact that the appellant found it necessary to apply for a work permit under regulation 16 of the Immigration Regulations, 1963, to be employed with Rayner & Co. as advocate and solicitor, that he, by clear implication, admitted that he was in professional employ up to 17th October, 1966, and that he was neither on the roll of advocates nor (as his counsel admitted) in possession of a temporary

licence to practice, it seems to me that these facts are most material, and show that the appellant was employed as an advocate and solicitor without being on the roll or temporarily licensed so to practise. It is pertinent to note that under regulation 16 an applicant is required, *inter alia*, to satisfy the controller that he is qualified to undertake the trade business or calling in respect of which the application is made. That he was given a work pass for the purpose indicated must imply that he applied for a pass for that purpose.

If he was in professional employ with Rayner & Co. he ought to have been in possession of a temporary licence since he was not on the roll. But if he had obtained a temporary licence in respect of that period he would have precluded himself from applying for admission to the roll because under section 4(3) of the Ordinance, any period during which a person resides in Sabah for the purpose of practising pursuant to a temporary licence under section 10(b) does not count towards the required period of six months under section 4(2)(c)(i).

If the appellant engaged in professional employment as an advocate and solicitor without a temporary licence and thus in breach of the Advocates Ordinance, can he be said to have discharged the burden upon him of satisfying the learned judge that he is in all respects a fit and proper person to be admitted to the roll of advocates? In my opinion the answer must clearly be in the negative.

At the outset I raised with counsel for the appellant the question whether there was any right of appeal against the exercise of the discretion vested in the Chief Justice or Senior Judge under section 6 of the Ordinance. I raised this point because the right of appeal is the creature of statute, and the statute, having in section 14(1) expressly provided for appeals and having omitted to provide for an appeal in the instant case, it seemed to be doubtful whether any such right to appeal exists. I doubt whether the somewhat obscure provisions of subsection (2) of the section give any such right. It is possible, however, that the appellant could bring his case under section 67 of the Courts of Judicature Act, 1964. Regrettably, counsel was unable to be of assistance to the court on this point but fortunately I do not find it necessary to decide it as, for the reasons which I have earlier indicated, I am of opinion that the appellant has failed to show that the learned judge was guilty of an erroneous exercise of the discretion vested in him by section 6 of the Ordinance and I would dismiss the appeal.

Gill J.: I have had the advantage of reading the judgment of the learned Chief Justice. I agree with it and have nothing of my own to add.

Chang Min Tat J.: I have had the advantage of reading the judgment of the Honourable the Chief Justice, Borneo, in the above appeal. I entirely agree with it and have nothing to add.

Appeal dismissed.

MOSES v. MOSES

[O.C.J. (Winslow J.) October 31, 1967]
[Singapore — Divorce No. 108 of 1967]

Family Law — Divorce — Whether neglect, failure or refusal to effect reconciliation a defence to divorce petition — "Unlikely to be reconciled" — Women's Charter, 1961, ss. 84(1)(e),(2)(g), and 86(2).

On the question whether, in a petition for divorce under section 84(1)(e) of the Women's Charter, the neglect, failure or refusal of the petitioner to have made efforts or refusal of the petitioner to effect a reconciliation with the respondent was (a) a reasonable answer or (b) a countercharge or (c) an allegation in defence to the petition,

Held: no such neglect, failure or refusal on the part of the petitioner to effect a reconciliation is a reasonable answer to a countercharge or an allegation in defence of a petition.

Per Curiam: "It seems to me, therefore, that any such neglect, failure or refusal on the part of a petitioner is not a ground which gives the court any discretion to say that it shall not be bound to pronounce a decree of divorce. One would have thought that if it had been the intention of the legislature to give the court a discretion in the matter, steps would have been taken to provide in this proviso that the court shall not be bound to pronounce a decree of divorce and may dismiss the petition, if in the opinion of the court, the petitioner has been guilty of any neglect, failure or refusal to make efforts to effect a reconciliation with the respondent."

"Where the marriage bond has become no more than a detested shackle after the parties have been separated for not less than seven years, it is in the public interest that the tie should be severed."

DIVORCE SUIT.

N. A. Christopher for the petitioner.

Freddy Yin Ee Kheng for the respondent.

Cur. Adv. Vult.

Winslow J.: The question of law which I have been asked to determine in these proceedings is:—

"Whether, in a petition for divorce under section 84(1)(e) of the Women's Charter, 1961 (No. 18 of 1961) the neglect, failure or refusal of the petitioner to have made efforts to effect a reconciliation with the respondent, is (1) a reasonable answer or (2) a countercharge or (3) an allegation in defence to the petition?"

The petitioner, who is the husband in this case, prays that his marriage may be dissolved under section 84(1)(e) of the Women's Charter on the ground that his wife "has lived separately from the petitioner for a period of not less than seven years immediately preceding the presentation of the petition and is unlikely to be reconciled with him".